



DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
2 NAVY ANNEX  
WASHINGTON, D.C. 20370-5100

ELP

Docket No. 6993-00  
1 December 2000

From: Chairman, Board for Correction of Naval Records  
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

Ref: (a) 10 U.S.C.1552

Encl: (1) DD Form 149 w/attachments  
(2) Case Summary  
(3) Subject's Naval Record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the United States Navy, applied to this Board requesting, in effect, that his naval record be corrected to show a more favorable type of discharge than the bad conduct discharge issued on 9 July 1956.

2. The Board, consisting of Messrs. Pfeiffer and Whitener and Ms. Humberd reviewed Petitioner's allegations of error and injustice on 29 November 2000 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Although it appears that Petitioner's application to the Board was not filed in a timely manner, it is in the interest of justice to waive the statute of limitations and review the application on its merits.

c. Petitioner reenlisted in the Marine Corps on 14 July 1955 for six years as a CPL (E-4). At the time of his reenlistment, he had completed more than two years of active service. His record reflects that he participated in the defense of United Nations positions in Korea from 1 January 1954 to 20 February 1955.

d. Petitioner served without incident until 20 January 1956 when he was convicted by general court-martial of a 66-day period of unauthorized absence (UA), from 29 September to 4 December 1955. He was sentenced to confinement at hard labor for one year, total forfeitures, reduction in rank to PVT (E-1) and a bad conduct discharge.

e. A review of the general court-martial by the staff legal officer noted Petitioner's testimony to the effect that when he returned from Korea he was asked to sign a waiver for overseas duty because there was a critical shortage in his military occupational specialty. He signed the waiver and received orders to join a replacement battalion. However, he got married before being transferred. He was granted 16 days leave upon transfer and during this period, his new wife was hospitalized with a kidney infection. He was requested and was granted a five-day extension of his leave. However, a second request for an extension of leave was denied and he stayed home with his wife. Petitioner testified that it became necessary for him to borrow money to pay doctor and hospital bills and he intended to remain at home until his wife was well and he paid off the accumulated bills. Petitioner's wife testified that she became ill during her husband's leave and he intended to return to duty, but delayed his return at her request. His mother also testified that he intended to return after he earned enough money to pay off the bills, but was apprehended before he could to do so.

f. The legal officer recommended that, in view of Petitioner's otherwise unblemished record and good service up to the time of the UA, the confinement be reduced to seven months. On 1 March 1956, the convening authority so mitigated the confinement.

g. The Navy Board of Review affirmed the findings and the sentence on 4 May 1956. Thereafter, Petitioner waived his right

to request restoration to duty and requested that the bad conduct discharge be executed. He received the bad conduct discharge on 9 July 1956.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action. In this regard, the Board notes Petitioner's low test scores, limited education, his service in Korea, and his unblemished service except for this single incident of UA. The Board believes his service in Korea and the extenuating family circumstances mitigates the single instance of misconduct to the extent that no useful purpose is served by continuing to stigmatize Petitioner's service with a bad conduct discharge. Accordingly, the Board concludes that it would be appropriate and just to recharacterize the bad conduct discharge to a general discharge under honorable conditions.

RECOMMENDATION:

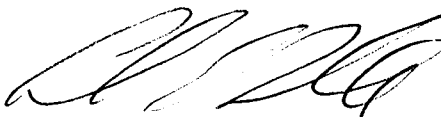
a. That Petitioner's naval record be corrected to show that he was issued a general discharge by reason of misconduct on 9 July 1956 vice the bad conduct discharge issued on that date.

b. That a copy of this Report of Proceedings be file in Petitioner's naval record.

c. That upon request, the Department of Veterans Affairs be informed that Petitioner's application was received by the Board on 16 October 2000.


4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN  
Recorder



ALAN E. GOLDSMITH  
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6 (e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6 (e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.



W. DEAN PFEIFFER  
Executive Director